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February 22, 1993

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Notice of Proposed Rulemaking, ET Docket No. 93-1

Dear Ms. Searcy:

Transmitted herewith for filing with the Commission on behalf of Harris Corporation are an original and 4 copies of the Comments of Harris Corporation in the above-captioned Rulemaking proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John I. Stewart, Jr.

cc: Bruce Franca
Richard B. Engelman
David Wilson
David H. Solomon, Esquire

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations	))))	ET Docket No. 93-1

To: The Commission

COMMENTS OF HARRIS CORPORATION

Harris Corporation ("Harris"), by its attorneys, files these comments in response to the Notice of Proposed Rulemaking released in the above-captioned proceeding on January 13, 1993. As explained in further detail below, Harris believes that, in order to comply with the congressional intent expressed in the Telephone Disclosure and Dispute Resolution Act ("the Act"), the Commission should slightly modify its proposed new rules to accommodate the exemption referred to in Section 403(c) of the Act.

Harris is a manufacturer of a wide variety of electronic equipment for sale to government and private customers in the United States and abroad. Its interest in this proceeding arises from the fact that it manufactures a group of devices that appear to fall within the ambit of the Commission's proposed new rules. Although its manufacture and sale of these devices is lawful under federal statutes, however, the new rules as currently proposed would appear to prevent Harris from obtaining the necessary equipment authorization to market them. This apparently unintended consequence is surely not what the Act contemplates.

The Harris device at issue is a cellular intercept system expressly designed for law enforcement and cellular security uses. It is specifically designed to receive cellular frequencies, and to scan those frequencies to "lock on" to channels in use. The device is intended for use in a mobile van or other surveillance post. It is software-driven, and requires the use of a password before it can be operated. Because it is designed for law enforcement applications, the system incorporates features specifically useful for that purpose, including real-time "minimizing" capability and triple audio output for simultaneous recording of the necessary triplicate tapes. Because of these features and the high quality of the device, the system's price can reach the $25,000 - $30,000 range.

While the device appears to fall within the definition of a "scanning receiver" in Section 15.3(v) of the Commission's Rules, it is not the type of consumer scanner with which the Commission's proposed new rules are principally concerned. Disabling its receiver in the cellular frequencies, as the new rules contemplate for all other scanning receivers, would destroy its sole function.

This rulemaking was initiated in response to the requirement of Section 403 of the Act that the Commission adopt regulations denying equipment authorization for scanning receivers capable of receiving cellular frequencies. Section 403 is intended to minimize the unlawful interception of cellular telephone communications by cutting off the supply of cellular-capable scanning receivers. It is not, however, intended to cut off the lawful production or lawful use of scanning receivers. See, e.g., 38

Cong. Rec. S17121 (Daily ed. Oct. 7, 1992) (Statement of Sen. Pressler).

The manufacture or sale of any device designed to be "primarily useful for the purpose of surreptitious interception" of electronic communications, including cellular communications, is expressly prohibited by Section 2512(1) of the Federal Criminal Code, 18 U.S.C. § 2512(1). Section 2512(2), however, exempts the manufacture or sale of such equipment to federal, state and local government entities and providers of electronic communications service. These particular entities are exempt from the manufacture and sales prohibition because they are permitted to use such devices to intercept communications under specific circumstances spelled out in 18 U.S.C. § 2511, which otherwise generally prohibits any such interception. Section 403(c) of the Act, in recognition of this limited exception permitting the manufacture and sale of cellular interception equipment to specified classes of users, expressly reaffirms this exemption.

In their current form, the regulations the Commission has proposed in response to Section 403(a) of the Act would effectively repeal this express statutory exemption. Because the proposed regulations would deny FCC equipment authorization for all scanning receivers capable of intercepting cellular communications, Harris would be unable to obtain certification for its own device, which it wishes to market to law enforcement agencies and cellular service providers.

This result would be inconsistent with the intent of the Act, as described in floor statements in both the House and the Senate.

(No reports were issued to accompany the Act.) For example, House Telecommunications Subcommittee Chairman Markey described Section 403 as bringing the FCC's equipment certification process in line with the Privacy Act "by restricting the manufacture of new radio scanners so that this equipment could not be used for illegal eavesdropping and interception of cellular frequencies." 138 Cong. Rec. E3315 (Daily Ed. Oct. 29, 1992) (Emphasis added). Senator Pressler, in introducing the amendment that was enacted as Section 403, stated as follows:

> I expect the FCC, in adopting regulations to enforce this provision, to be conscious of the fact that some uses of scanners are perfectly legal. My intention in offering this amendment is simply to increase the privacy protections of cellular telephone users without causing harm to legitimate users of scanners.

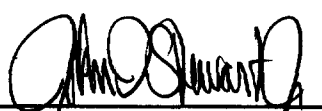
138 Cong. Rec. S17121 (Daily Ed. Oct. 7, 1992) (emphasis added). While his statement was made in a slightly different context, the express inclusion of the reference to 18 U.S.C. § 2512(2) as Section 403(c) of the amendment he offered makes clear that Congress does not intend that the FCC's regulations would operate in such a way as to bar the manufacture and sale of cellular intercept devices to exempt users under 18 U.S.C. § 2512(2).

Harris believes that the statutory exemption can be accommodated by a minor modification of the proposed new rules. The essence of this amendment is that manufacturers of devices that will be marketed to users exempt under 18 U.S.C. § 2512(2) would state as part of their application for equipment authorization

that the device will be sold only to such exempt users, the Commission would grant authorization for such devices on the condition that they be marketed only as permitted under 18 U.S.C. § 2512(2), and the restricted nature of such devices would be reflected in restrictive legends included on advertising materials and on labels affixed to the devices. A suggested modification to the Commission's proposed new section 15.121 that would accomplish these objectives is provided as Attachment A to these Comments.

Harris believes that this relatively minor modification to accommodate the continuing lawful manufacture and sale of cellular intercept devices is necessary in order for the new rules to be consistent with the Act and the intention of Congress.

Respectfully submitted,



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HARRIS CORPORATION

February 22, 1993

Appendix A

Proposed modified form of 47 CFR § 15.121:

Section 15.121 Scanning receivers and frequency converters used with scanning receivers.

[(a) Except as provided in subsection (b) of this section,] scanning receivers, and frequency converters used with scanning receivers, must be incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated to the Domestic Public Cellular Radio Telecommunications Service. Receivers capable of "readily being altered by the user" include, but are not limited to, those for which the ability to receive transmissions in the restricted bands can be added by clipping the leads of, or installing, a diode, resistor and or jumper wire or replacing a plug-in semiconductor chip. Scanning receivers, and frequency converters used with scanning receivers, must also be incapable of converting digital cellular transmissions to analog voice audio.

[(b) Scanning receivers, and frequency converters used with scanning receivers, that are designed to be primarily useful for the surreptitious interception of communications on the frequency bands allocated to the Domestic Public Cellular Radio Telecommunications Service may receive certification under this Part only if the applicant declares under penalty of perjury that (1) the device for which certification is sought will be sold only to entities exempted under 18 U.S.C. § 2512(2), and (2) any marketing materials distributed to purchasers or potential purchasers of the device will include the following legend:

> "This product is a restricted use item and can be sold only to authorized users. Its use shall comply with all local, state and federal statutes associated with the interception and monitoring of electronic communications."

Further, the label which shall be affixed to said device pursuant to Section 15.19 of this Part shall include the following language in addition to that required by Section 15.19:

> "Possession and operation of this device is restricted to authorized entities and authorized uses under Chapter 119 of the United States Criminal Code, 18 U.S.C. §§ 2510 et seq. Noncompliance may subject the user to criminal penalties and other sanctions."

Grant of any certification pursuant to this subsection (b) will be conditioned on compliance by the grantee with these requirements.]